

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 4 - 2021

RE: Propriety of a part-time magistrate continuing to represent criminal defendants in various courts.

FACTS

This opinion serves to clarify Opinion 8-2017, which addressed several questions presented. One question was whether a part-time magistrate could represent criminal defendants seeking expungements and/or pardons where the charges originated in the county in which the judge served. We concluded that a part-time magistrate should not represent such clients, stating:

...we find that a part-time magistrate should not... represent clients who are seeking expungements and/or pardons where the charges originated in the county in which the judge serves. However, the judge may represent, in the courts of appeal, clients who are seeking post-conviction relief or who are directly appealing convictions where the convictions were in General Sessions Court in the county in which the judge serves. Because the judge does not serve in General Sessions Court and has no jurisdiction over the matters in General Sessions Court, there is no violation of Section C(2).¹

Id.

Notably, in the previous opinion we stated that the judge should not represent clients seeking expungements or pardons from charges originating in the same county in which the judge serves, but we did not specifically discuss whether there was any difference if the expungement or pardon sought was for charges originating in magistrate court, municipal court, or General Sessions court.

The inquiring magistrate seeks clarification or reconsideration, specifically asking the following questions:

1. Would it be a violation of Section C (2) for the judge to represent clients who are seeking

¹ Section (C)(2) is contained in the “Application” section of the Code of Judicial Conduct.

expungements where the charges arise from the General Sessions Court in the same county where the judge serves as part-time magistrate?

2. Would it be a violation of Section C (2) for the judge to represent clients who are seeking a pardon or parole for charges that originated either in a summary court (municipal or magistrate court) or General Sessions Court in the same county where the judge serves as part-time magistrate?

CONCLUSION

1. A judge may represent clients who are seeking expungements where the charges arise from the General Sessions Court in the same county where the judge serves as part-time magistrate.

2. A judge may represent clients who are seeking a pardon or parole for charges that originated in either in municipal or General Sessions Court (but not magistrate court) in the same county where the judge serves as part-time magistrate.

OPINION

Section C (2) of the Compliance portion of Rule 501 states that a part-time judge "shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto."

The judge does not serve in General Sessions Court. The magistrate court on which the judge serves does not have jurisdiction, concurrent or appellate, over expungements from General Sessions charges. Thus, the magistrate may represent clients who are seeking expungement from charges that arose in General Sessions Court in the same county in which the judge serves as part-

time magistrate.² However, the magistrate should not represent clients seeking expungement of charges that originated in the county magistrate court on which the judge serves. While the judge would not actually be practicing law in the court in which he or she serves, representing defendants who were convicted or pled guilty in the county magistrate court, before fellow magistrates, could create an appearance of impropriety.

Similarly, the magistrate court has no jurisdiction over matters for pardon or parole that originated in either General Sessions or municipal court in the same county, since those matters are under the jurisdiction of the SC Department of Probation, Parole and Pardon Service. Thus, it would not violate Section C (2) for part-time magistrate to represent clients who are seeking a pardon or parole for charges that originate either in General Sessions or municipal court in the same county where the judge serves as magistrate. However, as above, the judge should not represent any client seeking a pardon or parole for charges originating in the magistrate court of the county in which the judge serves.

To the extent that Opinion 8-2017 is inconsistent with this Opinion, it is hereby amended. The remaining portion of Opinion 8-2017 remains unchanged.

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

² Magistrates do, on occasion, set bonds for General Sessions offenses. Obviously, the inquiring magistrate should not represent anyone for whom the judge may have set a bond.

s/ Keith M. Babcock
KEITH M. BABCOCK

February 8, 2021